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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,750	10/11/2001	Michael Ferguson	8576-001-27	7168

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Supervisor, Patent Prosecution Services  
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EXAMINER

NGUYEN, THUKHANH T

ART UNIT PAPER NUMBER

1722

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/973,750

Applicant(s)

FERGUSON, MICHAEL

Examiner

Thu Khanh T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 11-12 and 15 are rejected under 35 U.S.C. 101 because these claims are directed to neither a “process” nor a “machine,” but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-12 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. In *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990). Claim 11 directs to a process of treating air by using the scrubber to produce moisture; claim 12 directs to a process of reusing captured moisture; and claim 15 directs to a process of heating the material to a certain temperature. These are the

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methods of using the apparatus, and are indefinitely depended on an apparatus claim 10. The applicant is suggested to amend the claims adding the “capable of” phrase after the apparatus structure and before the process limitation to solve the indefinite problem.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 10-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Dausman et al (4,872,998).

Dausman et al teach an apparatus for forming pelletized fertilizer from sludge material, comprising a raw material ventilation system (Fig. 13-16) including a scrubber (14) for treating air by removing dust and odor produced from the material (cols. 3, line 59 to 65), a dryer (11) connected to the ventilation system (13-16) and a pelleting system (20) for producing pelletized material (col. 5, lines 21-39).

The apparatus further comprises a fully automated control means for starting up and shutting down different components (col. 3, lines 29-32). Therefore, it is inherent that the apparatus is capable of starting the ventilation process by the ventilation system (13-16) in the dryer (11) for removing some of the dust and the odor prior to starting the heat drying process by running heating fluid through a hollow hub (44) located within the dryer (11).

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In regard to claims 11 and 12, the scrubber (14) is inherently producing moisture because it is a water jet scrubber (col. 5, lines 8-12), and is capable of reusing the moisture produced by the scrubber by recycling the moisture back to a treatment plan (col. 5, lines 10-12).

In regard to claims 13, Dausman et al disclose that the pelleting system comprises means, such as plurality of rollers (20a) or the CPM 7000 for pressing the find dry sludge material into pellets (col. 5, lines 25-30), wherein these pelletizers are capable of producing up to 10 tons per hour.

In regard to claim 14, Dausman et al disclose a finish area (21-22) for cooling and storing the pellets (col. 5, lines 31-39).

In regard to claim 15, the apparatus is capable of heating the material from 180F to 225F, in order for the water to be vaporized and heat dry the sludge material (col. 5, lines 3-5).

In regard to claim 16, the pelletizer is capable of forming the pellets of different sizes (col. 5, lines 33-35).

In regard to claim 17, the apparatus is capable of forming pellets that comprising organic matter and humus such as the sewage sludge (col. 1, lines 14-24).

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 10-17 have been considered but are moot in view of the new ground(s) of rejection.

Dausman et al disclose a closed system for pelleting sewage sludge, comprising a ventilation system (13-16) that remove the dust and odor from the sludge material in a housing (38) of the dryer (11); wherein each components of the apparatus could start-up or shut-down

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automatically. However, the operations of each component are functional limitations and cannot be used to determine the patentability of the apparatus claims. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." Hewlett- Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (Emphasis in original)

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin L. Utech can be reached on 571-272-1137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TN  
02/02/05

  
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